

Speech of Henry F. Ashurst

The senate having under consideration the following resolution:

"Resolved, That such a system of direct legislation as the initiative and referendum would establish is in conflict with the representative principle on which this republic was founded, and would, if adopted, inevitably work a radical change in the character and structure of our government."

Mr. Ashurst said:

Mr. President: As I have the honor in part to represent a state in which the people have reserved to themselves a part of their power under the initiative and referendum, I feel it incumbent upon me here and now to make reply to the distinguished senator from Texas (Mr. Bailey), whom the senate is always pleased to hear, and as I sat in my seat and listened to the singularly sweet and flexible voice of the senator and heard him swell the most commonplace subjects and even untenable propositions into rich eloquence, I thought how apt was the statement of Boswell, "that the object of oratory was not truth only, but persuasiveness as well." Indeed, the allurements of the senator's oratory reminded me of the lines which Swift is said to have indited to Pope:

"From him I can not hear a line,
Except I sigh and wish it mine.
For he can in one sentence fix
More things than I can say in six."

During his address the senator from Texas adverted to Hon. William Randolph Hearst, and, if I understood the senator's words aright, he intended to impute some questionable motives to Mr. Hearst. I would be false to the conduct I have marked out for myself, and false to a valued friend, if I did not in this place say that, while I know nothing of the differences which exist between Mr. Hearst and the senator from Texas (Mr. Bailey), I am able to say that I know Mr. Hearst to be a loving father, a faithful husband, a loyal friend, and a man whose name is honorably associated with the auspicious commencement and successful conclusion of hundreds of movements that make for the strength of the state, the happiness, the prosperity, the glory, and the greatness of our nation. I believe, moreover, that Mr. Hearst is a sincere patriot, a true friend of the people, and a man of great courage and foresight. On this subject more than this need not be said; less than this by me could not be said.

DIRECT LEGISLATION

The senator from Texas has proceeded upon a false hypothesis in assuming, as he seemingly has all through his argument, that the advocates of direct legislation intend to destroy representative government. Such is not the intention of the advocates of direct legislation, but they do take the position that while direct legislation is not intended as a substitute for the lawmaking power it is intended to supplement the lawmaking power and to supply the deficiencies and delinquencies which the people's chosen representatives sometimes exhibit in the state legislatures.

During the course of the brilliant speech of the senator from Texas, he stated that frequently a large percentage of the voters do not go to the polls, and therefore do not vote upon constitutional amendments, referred laws, and measures proposed by initiative petition. Mr. President, admitting for the sake of argument that this criticism is apt and just, I ask, where will relief be found? Certainly not in the senate, for here we have, when all the states are represented, 96 senators, each paid a salary of \$7,500 per year to remain here and vote upon measures, yet sometimes we find that we are without a quorum, and frequently legislation is determined by a vote as low as 30 per cent of the entire membership of the senate, with only 55 per cent, 60 per cent, or 70 per cent of the membership of the senate voting on the measure. In other words, a close investigation will disclose that there is as large a percentage of the senators not voting on various questions as there is percentage of voters in a state who fail or decline to vote upon constitutional amendments, referred laws, or measures proposed by initiative. I have at some labor investigated the Record, and find that during the second session of the Sixty-second congress there was an astonishingly large percentage of nonvoting senators, so that the argument that the people do not vote under the initiative and referendum must fall to the ground when it is remembered that the percentage of persons not voting is no greater than the percentage of the senators who are absent or paired, and who therefore do not vote, and I shall here read into the Record a list

of various roll calls showing the percentage of senators not voting. The list is as follows:

April 26, 1912. Being a bill (S. 2234) to provide for primary nominating election for presidential candidates in District of Columbia. Yeas, 23; nays, 18; not voting, 54. Less than quorum voted. Only 45 per cent of the membership voted on this bill.

March 19, 1912. Amendment to increase salaries of commissioners of the District of Columbia. Yeas, 36; nays, 13; not voting, 42. Only 42 per cent of the membership of the senate voted on this amendment. Carried by 38 per cent of the membership.

March 19, 1912. Amendment relating to disposition of fees collected for permits in District of Columbia. Yeas, 35; nays, 13; not voting, 43. Only 53 per cent of the membership voted on this amendment. Passed by vote of 38 per cent of membership.

May 31, 1912. H. R. 18960. Conference report on agricultural department appropriation bill. Yeas, 27; nays, 36; not voting, 32. Only 66 per cent of the membership of the senate voted on this report. Rejected by 38 per cent of membership.

August 14, 1912. A bill (H. R. 25034) to reduce the duty on cotton. Mr. La Follette's amendment: Yeas, 14; nays, 46; not voting, 34. Only 64 per cent of membership voted on this amendment. Defeated by 48 per cent of membership of senate.

August 14, 1912. Mr. Oliver's amendment: Yeas, 29; nays, 31; not voting, 34. Only 64 per cent of membership voted on this amendment. Rejected by 33 per cent of membership of senate.

August 14, 1912. Mr. Kenyon's amendment: Yeas, 51; nays, 9; not voting, 34. Only 64 per cent of membership voted on this amendment. Carried by 54 per cent of membership.

August 14, 1912. On passage of bill: Yeas, 36; nays, 19; not voting, 39; only 59 per cent of membership voted on this bill. Passed by 38 per cent of membership.

January 31, 1912. A bill (S. 252) to establish a children's bureau; Overman substitute: Yeas, 30; nays, 46; not voting, 15. Only 84 per cent of membership voted on this substitute. Defeated by 48 per cent of membership of senate.

January 31, 1912. Mr. Thornton's amendment: Yeas, 30; nays, 42; not voting, 19. Only 80 per cent of membership voted on this amendment. Rejected by 46 per cent of membership.

January 31, 1912. Mr. Culberson's amendment: Yeas, 39; nays, 34; not voting, 18. Only 73 per cent of membership of senate voted on this amendment. Passed by vote of 41 per cent of membership. On the passage of the bill: Yeas, 54; nays, 20; not voting, 17. Eighty-two per cent of membership voted on the bill. Passed by 57 per cent of membership.

July 31, 1912. A bill (S. 4862) to investigate certain accounts growing out of construction of Corbett Tunnel, Wyo.; over veto: Yeas, 42; nays, 17; not voting, 35. Only 63 per cent of membership voted on this bill. Passed by a vote of 45 per cent of membership.

July 2, 1912. A bill (H. R. 20182) to fix duty on chemicals. Amendment: Yeas, 35; nays, 0; not voting, 59. Only 37 per cent of membership of senate voted on this amendment. Passed by 37 per cent of membership.

July 3, 1912. An amendment to: Yeas, 58; nays, 0; not voting 36. Only 65 per cent of membership of senate voted on amendment. Passed by 65 per cent of the membership of senate.

July 3, 1912. On passage of bill: Yeas, 27; nays, 32; not voting, 35. Only 63 per cent of membership voted on bill. Defeated by vote of 34 per cent of membership.

April 11, 1912. H. R. 18956, Army appropriation bill. Vote on amendment: Yeas, 47; nays, 6; not voting, 42. Only 56 per cent of the membership of the senate voted on this amendment. Carried by 49 per cent of membership.

June 10, 1912. On conference report: Yeas, 27; nays, 24; not voting, 43. Only 51 per cent of membership of senate voted on report. Report was accepted by vote of 28 per cent of membership.

June 12, 1912. To reconsider: Yeas, 28; nays, 29; not voting, 37. Only 61 per cent of membership voted on this measure. Defeated by 29 per cent of membership.

May 20, 1912. A bill (S. 6864) to construct a railroad in Alaska: Yeas, 31; nays, 23; not voting, 41. Only 60 per cent of the membership of the senate voted on this bill. The bill

was passed by a vote of 32 per cent of the membership of the senate.

The system of direct legislation, commonly designated "the initiative and referendum," has been in various ways and different forms assailed as being opposed to a republican or representative form of government, and many who argue against the initiative and referendum take the position that there is only one kind of republican form of government.

In discussing what was "a republican form of government" the supreme court of the United States, through Mr. Chief Justice Waite, in the case of *Minor v. Happersett* (21. Wall., 175), said, speaking of the guaranty clause of the federal constitution:

"The guaranty is of a republican form of government. No particular government is designated as republican; neither is the exact form to be guaranteed in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended."

And Mr. James Madison, in No. 43 of the *Federalist*, wrote as follows:

"Whenever the states may choose to substitute other republican forms, they have a right to do so and to claim the federal guaranty for the latter."

Thus we observe that the states may substitute other republican forms, and in doing so they do not forego the right to claim the federal protection as to the substituted form; in other words, no particular form is prescribed.

The edition of 1785 of Dr. Johnson's dictionary contains the following:

"Republican (adjective.) The placing of government in the hands of the people."

The 1791 edition of Walker's Dictionary contains the following:

"Republican (adjective.) Placing the government in the hands of the people."

"Republican (substantive.) One who thinks a commonwealth without monarchy the best government."

Charles Pinckney, who served in the federal constitutional convention, in a speech on May 14, 1788, in the debates in the legislature and in convention of the state of South Carolina on the adoption of the federal constitution, said:

"We have been taught here to believe that all power of right belongs to the people; that it flows immediately from them, and is delegated to their officers for the public good; that our rulers are the servants of the people, amenable to their will, and created for their use. (See Elliott's Debates, vol. 4, p. 319.)"

And in the same speech Mr. Pinckney, quoting Paley, a deacon of Carlisle (vol. 2, pp. 174-175), in enumerating the three principal forms of government said:

"A republic is where the people at large, either collectively or by representation, form the legislature. (See Elliott's Debates, vol. 4, p. 328.)"

It might further illuminate the discussion as to what is a republican form of government by stating that under the now deposed "President" Diaz of Mexico was republican as to form, but there was some difference of opinion as to whether it was republican in substance; but I only use this illustration to emphasize the fact that there are a number of different forms of republican government.

In the case of *Chisholm v. Georgia* (2 Dallas, U. S., p. 419 et seq.) the judges delivered their opinions seriatim, and Mr. Justice James Wilson said:

"As a citizen I know the government of that state (the state of Georgia) to be republican, and my short definition of such a government is one constructed on this principle, that the supreme power resides in the body of the people. (See p. 453 et seq.)"

This opinion was announced in 1793, and only six years after the drafting of the federal constitution, and it may be considered at least as a contemporaneous definition of the phrase "republican form of government;" and no authority, not even Alexander Hamilton or James Madison could be followed with more safety than this eminent James Wilson, the same James Wilson who in the constitutional convention of 1787 advocated the election of senators by direct vote of the people. This same James Wilson was one of the great lawyers of his day, and became one of the most illustrious judges of the supreme court of the United States for under the judiciary act passed by congress in 1789 President Washington appointed him as one of the associate justices of the supreme court, naming also as associate justices John Rutledge, William Cushing, John Blair, and James Iredell, naming John Jay, of New York, as chief justice; and I might digress to say that